

# Workers' Compensation Advisory Committee (WCAC)

Meeting Minutes

April 5, 2004

## Introductions:

### Present:

#### Committee Members:

Business Representatives: Amber Balch Carter, Association of Washington Business; Mike Sotelo, W.G. Clark Construction Company; Jon Warling, Mon-Jon Orchards

Labor Representatives: Owen Linch, Joint Council of Teamsters No. 28; Dave Johnson, Washington Building & Construction Trades Council; Robby Stern, Washington State Labor Council, AFL-CIO

Self-Insured Employers' Representative: Lori Carlson, Sellen Construction Company, Inc.

Self-Insured Workers' Representative: Ellie Menzies, Service Employees State Council

Ex Officio Member: Tom Egan, Board of Industrial Insurance Appeals

Chair: Bob Malooly

Recorder: Laurie Jenkins

Presenters: Paul Trause, Bob Malooly, Scott Daniels, Robert Painter, Ernie LaPalm, Doric Olson, Tom Egan, Jamie Lifka

Guests: Mark Johnson, Nancy Dicus, Kirt Gardiner, Dave Kaplan, Tammie Hetrick, Tom Kwieciak, Amy Brackenbury, Sara Crumb, Jennifer Strus, Jan Gee, Dan Fazio, Jill Reinmuth, Janice Camp, Lauren Gubbe, Jennifer Bender, Art Dalessandro, Kim Hoff,

L&I Staff: Sandy Dziedzic, Judy Schurke, Peter Lichtblau, Heather Grob, Michael Wood, Michael Mercier, Gary Franklin, R.T. Nelson, Chuck Hitchings, Bill Vasek, Kathy Kimbel, Ernie LaPalm, Doric Olson, Joel Sacks, Hal Stockbridge, Suzanne Mager, Grace Wang,

**Review/Approval of December 8, 2003 Meeting Minutes** – Minutes were approved as presented.

*Business noted that the Questions/Comments/Requests for additional break out of the survey data referenced on page 5 were not addressed.*

The responses to the above questions will be provided and attached to draft minutes of this meeting.

## **Draft Amendment to the Definition of Proper and Necessary** – Jamie Lifka

Jamie first pointed out the emergency rules relating to SHB 1691 (Advanced Register Nurse Practitioners) and SB 5356 (Physician Assistants; ROA) due by July 1, 2004. She explained that the “proper and necessary” language was changed in order to provide a definition of medical necessity common to state agencies and to use evidenced-based criteria for determining which services to purchase. This definition change is expected to result in improved health care outcomes and increased safety, avoidance of inappropriate care expenses, and consistency of health care purchasing decisions. In accordance with the Stanford model contractual language,

proper and necessary is defined as curative or rehabilitative and known to be effective in improving health outcomes. For new health care services, effectiveness is determined by scientific evidence, which is evidence from controlled clinical trials and/or high quality observational studies. She added that cost could affect a proper and necessary decision and directed the committee's attention to (e) under WAC 296-20-01002, which stated that if two treatments have the same effect as shown with scientific evidence, the less expensive treatment may be covered while the more costly treatment may not be covered. A treatment more expensive than alternative treatment but that is more effective, as shown with scientific evidence, may be considered proper and necessary. Jamie then asked for feedback from the committee.

*Labor questioned whether we really need legislation. Would expert opinion or a formal peer review process be beneficial? Would it be helpful to have the hospital association comment?*

Paul agreed that a formal process would be helpful as long as we didn't bring in advocates from the provider. Bob stated a session demonstrating how we utilize scientific evidence would be beneficial to lay out how these decisions are made.

*Labor stated they would like to see what comments L&I has received on the rules.*

Jamie confirmed that she would follow-up on this inquiry.

### **Board of Industrial Insurance Appeals Update – Tom Egan**

As shown in the BIIA graphs, Tom updated the committee on the following information:

- *Appeals Filed and Granted by Month:* Total appeals are lower by approximately 10 percent as compared to last year.
- *Total Industrial Insurance Appeals Filed:* The BIIA is averaging about 1,000 appeals a month.
- *Department Reassumption Rate by Quarter:* The reassumption rate has trended down approximately four percent. The rate is currently 25 percent compared to the June 2003 rate of 30 percent. A lower reassumption rate means more work for the Board.
- *Quarterly Agreements and Dismissals:* According to the BIIA's latest statistics, dismissals have caught up with agreements.
- *Affirmance Rate by Month – PD&Os and D&Os:* Compared to the low State Fund rate (less than 50 percent) in November 2003, affirmance rates increased dramatically. Overall, they are averaging around 55 to 60 percent.
- *Average PD&O Lag-time by Quarter for Hearing Judges:* The lag time is averaging around four weeks.
- *D&O Time-Lag by Quarter:* Because only two Board members were available during the period July through September 2003, decision and order time-lag was over 90 average days. October through December 2003 has decreased substantially.
- *Quarterly Average Weeks to Completion:* The Board's goal of 35 weeks from date filed to date of final order is currently being met.
- *Caseload at End of Month:* The February 2004 case load was 5,220, which is a ten percent drop during the last six months. At the same time last year the case load was 5,716.

- *Final Orders Appealed to Superior Court-Quarterly:* Final orders appealed to the Superior Court are still low--up from three percent to between four and five percent. This fluctuation was attributable to the Cockle and [Almano] decisions.

### **Fraud Update – Ernie LaPalm and Doric Olson**

Ernie introduced Doric Olson, the Fraud Program Manager, to the Committee. Ernie explained that the department is committed to protecting the integrity of the Washington workers' compensation system by deterring, detecting and pursuing fraud and abuse. He explained that efforts are currently underway to identify all fraud in the employer, provider and worker aspects of the system. Thirty people in three teams have been assembled to evaluate our current work processes. One hundred field officers are being trained to detect, screen and investigate potential problems. He provided several examples where fraud identification is currently underway including inappropriate billing from providers, inadequate premium payments from employers, and inappropriate claims from workers.

*The Self-Insurers Employer representative expressed interest in hearing more about L&I's fraud efforts.*

*Business asked how many fraud investigators did L&I employ?*

Doric responded 37.

*Labor asked who was making the assessment regarding inappropriate care? Concerns regarding the inappropriate care analysis were expressed. Updates were requested.*

Paul stated that the agency will be contracting with outside contractors to ensure that decisions are appropriate. Bids have not been received yet. Quality of care is expected to be achieved through the peer review process.

*Labor stated that studies reflect employer fraud is much worse than worker fraud.*

*Business stated there was more reporting of employer fraud.*

*The Self-insurers employer representative requested that we provide updates on our fraud plans.*

Paul stated the agency is stepping up its efforts to educate the public on types of abuses that exist in the workers' compensation system in Washington State. We plan to publicize significant cases in which fraud is found as well as enhance our website with information about fraud and how to report it. He reported that agency resources will be reallocated and more staff will be added to meet the agency's commitment to more effectively detect and pursue fraud and abuse of the workers' compensation system.

### **Results of the Asset Allocation Model – Conning and Company:**

Scott Daniels and Robert Painter briefly explained L&I's investment strategy. Because of changes in L&I's balance sheet in the spring of 2003, the agency's investment strategy was closed reviewed. Duration targets for bonds in 608 (Accident Fund) and 610 (Pension Fund) are based on duration and value of loss reserves. The loss reserves have long durations, with the three funds ranging from 7 to over 10 at September 2003. The duration target for bonds in 609 (Medical Aid Fund) was fixed between 3.5 and 4 to balance interest rate risk against the risk of unexpected medical inflation. Fifteen percent of L&I's total portfolio is invested in common stocks, which is an allocation comparable to other insurers. Changes to the balance sheet were driven by low interest rates, low premium rates, increased benefits, and the zero percent return in equity markets over the past five years.

The Conning representatives described their financial modeling process and the benefits provided. Working closely with L&I actuaries and management, investment strategies were created to keep premium rates lower over the long term as well as avoid excessive premium rate volatility in the short term. General observations noted during the modeling process included: L&I's current strategy has been reasonable; L&I's insurance risks far outweigh its investment risks; inflation risk in 609 is significant; common stocks are attractive with long liabilities, a long investment horizon and inflation risk; and premium rates would be more volatile if the contingency reserve were managed with a tight band around its target.

The recommended investment strategy included duration targets at 9 for bonds in 608 and 610 because it provides a good balance of risk and return. The duration target is extended from 4 to 6 for 609 because it is expected to be responsive to inflation rate changes and provide additional income over time. An equity allocation of 10 percent in 608/610 and 30 percent in 609 was recommended. The recommended equity allocations are expected to lock in the appreciation from the latest bull market, and the fixed income duration targets are expected to remain stable from quarter to quarter. All equity holdings are in the form of index funds.

*Labor asked if Conning included the threat of terrorism in its risk calculations?*

The Conning representatives did not include terrorism as a percentage of risk. Bob stated that because we are a State Fund with a reasonable contingency reserve, the system can take some hits without a catastrophic effect. Paul informed the Committee that Conning was assigned two goals: 1) limit volatility and 2) produce a decent return. As long as we remain within the set ranges, rates will be stable.

### **Brief Actuarial Update – Bill Vasek**

Bill stated that the Washington state workers' compensation system provides good value both to employers and injured workers. In terms of costs Washington ranks in the lowest one-third of states nationally and in the upper one-third in terms of benefits. In 2004, L&I raised rates an average of 9.8 percent. Other states and private workers' compensation companies also raised rates by an average of 50 percent nationally over the past three years. Bill explained that L&I maintains reserve funds to pay outstanding claims. Those reserves are invested and the income is used to decrease rates paid by employers and employees. Rate increases were necessary in 2003 and 2004 because: reduced portfolios and market yields significantly reduced the reserves and income source, injured workers are finding it more difficult to return to work because of the weak economy and job market, medical costs are increasing, and certain Washington state court decisions have expanded the definition of benefit, which increased costs.

Bill reported that the Industrial Insurance Fund's unaudited net income for the 12 months ending December 31, 2003 is \$477 million compared to a negative \$908 million for the 12 months ending December 31, 2002. The change in net income was driven by increased total revenues earned, primarily as a result of increased premiums earned and a one-time \$200 millions reserve takedown for the changes in the hearing loss regulations. When the January 1, 2003 rate increase took effect, net standard earned premiums for the prior 12 months increased 41.5 percent. L&I paid out \$284 million more than it received during the 12 months ending December 31, 2003. During this time \$1,067 million in premiums were collected., and benefits paid during this time were \$1.13 billion, growing at 7.6% annually.

Bill stated the best estimate of reserves is \$10,574,726,000 for future benefits and \$592,193,000 for future claims administration expenses, where pension liabilities are discounted at 6.5% and before discounting the non-pension liabilities. The non-pension liabilities are then discounted to present value at four percent. The total final carried benefit liabilities is \$8,206,433,000. The difference between the best undiscounted reserve estimate and the liability amounts carried is 26 percent for future benefits and 33 percent for claims administration.

Paul asked the Committee for feedback concerning the financial statements. He stated he will regularly distribute financial reports to the Committee for earlier to review.

#### **Update on Governor's Commission / Hours Worked Bill – Paul Trause**

Paul informed the Committee that the Governor's Office is setting up an informal working group to examine long-term changes to the state's workers' compensation system and to propose administrative and legislative reforms. This group is not driven by L&I. The agency will provide information and comparisons, when requested to do so, and respond to inquiries. He is not aware of any solicitation for members from labor or business. He does not know if the hours versus wages issue will be address by this group. It is his understanding that this will be an informal, issue-oriented working group and he is hopeful this process will produce recommendations this fall.

#### **Future Agendas for WCAC; Reserving Rates and Actuarial Review – Paul Trause and Bob Malooly**

The Committee members were asked to look at the Discussion Topics handout. Paul stated that the Agency would like set monthly meetings between now and September to discuss important considerations in ratemaking, as a means to get a sense of what the Committee believes is appropriate. The special WCAC meetings will focus on the process, assumptions and policy considerations involved in determining rates for next year. For each topic a short paper will be produced that describes the issue and its pros and cons for the members to review and consider prior to each meeting. Additional actuarial assistance will be provided if the committee feels it would be helpful. It is important that everyone understands the issues so that informed discussions can occur.

*A copy of responses to questions posed at the December 2003 meeting was requested.*  
See attachment.